

# An unfinished story: The grand jury's Panther report

Articles by Harry Kalven Jr., Jon Waltz, Francis Ward—see p. 4

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# The Grand Jury Panther Report: an unnerving story

By Harry Kalven Jr.

On May 15, 1970 over the signature of its foreman, Ronald Albion, the federal grand jury which has been investigating possible violations of the federal Civil Rights Acts arising out of the Panther raid of December 4, 1969, submitted its report. It was an analysis of the celebrated raid in which Fred Hampton and Mark Clark were killed. The report is a carefully compiled, carefully written document of considerable scope; it is divided into 23 sections and covers 249 pages. It contains much material that is new even for those who had been following the widely publicized event as closely as possible in the press.

Although the grand jury heard nearly 100 witnesses, studied interviews with another 100 who were not called, and gave consideration to some 130 exhibits, the seven Panthers who had been in the apartment the night of the raid and who survived refused to cooperate in the inquiry. This refusal appears to have been a decisive factor in causing the jury not to indict any of the police or public officials involved. Its final conclusion is phrased thus:

"... in this case, it is impossible to determine if there is probable cause to believe an individual's civil rights have been violated without the testimony and co-operation of that person" (p. 242).

My chief reaction to the report is that it was designed to quiet public concern over the raid. It offers an extensive professional federal investigation which finds insufficient basis for indictments. And yet it is so critical of the police performance, and so candid in reporting facts unfavorable to the police, that it cannot lightly be dismissed as a biased work. Creating that impression was the strategy behind the report, I think; and it appears to have worked with the press in general.

What is deeply fascinating in reading the report is that the strategy does not quite come off. There is too much candor. The result is an unnerving book — a story that clamors for the serious, solemn and

sustained attention of public officials, the bar, the press, and the public generally.

Other reactions, after reading the report, are that it is a deliberately complicated document, it has rather sensational omissions that may have been designed to mislead the public and the press about the meaning of the grand jury's findings, it is mysteriously silent about the particular actions which caused Fred Hampton's death, it makes curious use of a "composite" account by policemen involved in the raid (thus preventing independent judgment of the credibility of individual policemen), and, as Nathan Lewin has argued in a very able article in the New Republic (June 6, 1970), it relies on unpersuasive arguments to support its case that the lack of Panther testimony prevented the jury from making indictments.

The report also has another side. It furnishes a great deal of precise data which point to formidable criticisms of the police performance.

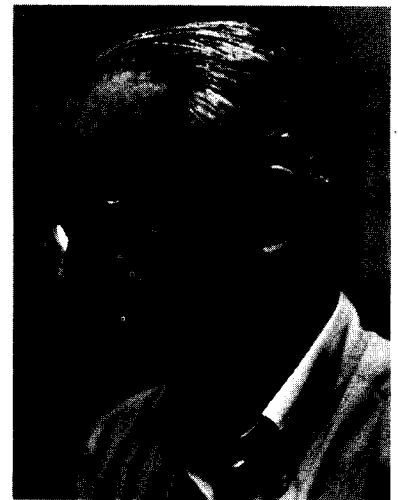
## I — Before and After the Raid

1. The report concludes there was probable cause for issuing the search warrant and hence a legal predicate for the police incursion.

The initial information that there were guns in the Panther apartment came from the FBI. The report states: "The information forwarded by the FBI to Assistant State's Attorney Jalovec, while generally confirming the existence of an arms cache, would not, standing alone, have justified a search warrant" (p. 204).

It is however supplemented on December 2 by information obtained by Sergeant Groth from "a confidential informant," and on this basis the warrant is issued. The harvest from the raid, although it does not quite live up to the advance billing, does yield one illegal sawed off shot gun and one stolen police weapon as well as seventeen other weapons which had not been registered.

Yet although the occupants' alleged illegal possession of guns was the basis of the raid on their apartment, the grand jury found that police had failed to record or



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Harry Kalven Jr.

identify "in any systemic way the individuals who possessed such weapons or even the location in the apartment from where each was seized" (p. 205). The report said the police procedures were such as to preclude "either a proper charge or a fair trial" (p. 206) for illegal possession of weapons. No one was arrested for illegal possession which was the original objective of the raid. Perhaps one other detail is worth noting. The FBI reports to Jalovec had indicated that among the seven persons "most frequently at the apartment" was Fred Hampton (p. 55).

2. To the main features of the raid plan which had become familiar via the press — the use of only 14 men, the failure to bring tear gas, lights, or portable sound equipment, the bringing of a sub-machine gun as a police weapon, the report adds a few further items. Sgt. Groth, the leader of the raid, testifies that he had never been on a prior raid where a sub-machine gun was carried (p. 63). He knew Hampton "would possibly be in the apartment" (p. 67). He told the grand jury that he did not think it relevant to so advise the other police. He had previously rejected the suggestion that the raid be made at 8 pm when the Panthers would be at a political meeting because it "could be a trap" (p. 60). Yet he also testified that he "did not have any special plan for dealing with the possibility of resistance."\*

3. The report devotes considerable attention to the conduct of the police immediately after the raid (pp. 70-97). They left the scene almost immediately, doing little to collect or inventory evidence, or to secure the premises. The failure to secure the premises lasted from Dec. 4 until Dec. 17 when the coroner had them sealed. In the interim hundreds of people passed through the apartment on tours conducted by Panther guides. An evidence technician from the Mobile Crime Lab Unit appeared within minutes after the shooting and made a search for over an hour collecting some further evidence, but

The grand jury report cites an FBI search of Panther headquarters which took place without gunfire. FBI agents had telephoned the headquarters to announce their search and to state that the building was surrounded.

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Ray:

he took as his function "to establish the authenticity of the account given by the raiding officers" (p. 94).

The report provides a chart (p.93) showing that of some 151 items recovered, only 77 were recovered by the States Attorney's Police or the Crime Lab Unit; 43 were due to the efforts of the Panther defense attorney; and another 30 were the product of the FBI which did not begin to investigate until Dec. 22. The report is critical of the investigative techniques of the local police, but does not make clear whether they were the result of routine inefficiency or were perhaps unusually sloppy in this instance.

4. The Internal Inspections Division of the Police Department, as institution for internal discipline, concluded its investigation of the raid and reported on December 19 that there was "no apparent misconduct or impropriety by any of the officers involved in the incident" (p.116). Perhaps the only amusing thing in the report is the account (pp.114-126) of the stringency of this inquiry. The questions to be asked were reviewed in advance and revised by the States Attorney's office and Sgt. Groth; the subject officers were then briefed in advance on the questions; the examining officer testified that the questioning was not designed to test the truth of the officers' accounts ("I assumed that everything they said was true" p. 123). When told of the investigation, Superintendent Conlisk is reported as saying he was "flabbergasted to think that such a thing could exist" (p. 125). The Director of IID stated that this was not a "normal" investigation, that it was "an extremely bad investigation." In further questioning, he provided that appropriate last word: "Q. As a matter of fact, have you ever seen one as bad as this one? A. No, sir" (p. 126).

In contrast, the States Attorney's police gave a detailed re-enactment of the raid in a 28-minute television show over WBBM-TV, with "each officer acting out and describing his part in the raid" (p.41). The re-enactment used a mock-up of the apartment built in the State's Attorney's Office.

Standing by themselves, these points do not amount to much; they seem to indicate once again that the Chicago police are at times non-professional, inefficient and self-protective against criticism. But this time they do not stand by themselves and one should look at them again in light of other data in the report.

## II - The Writing of the Report

There are perhaps five things about the style and structure of the report that are worth comment. First, although written simply and lucidly, the report has been divided into sections which give it an air of complexity. The upshot is that unless a reader uses pencil and paper to keep track of the data, he gets only a vague impression of what happened during the twelve minutes of the raid.

Second, there is an astonishing failure to

# Why no indictments?

CJR asked Jon R. Waltz, a law professor at Northwestern University, to comment on the grand jury's report. We asked:

*Could the federal grand jury have brought indictments based on the information it gathered, even without testimony of the Black Panther survivors?*

In my view, the evidence reflected in the grand jury's report would support indictments for violation of § 242 of the federal Civil Rights Act. This set of indictments would have been based on the Hanrahan raid itself, and would have named the special police involved in it and those lawyers in the Office of the State's Attorney who were responsible for it.

It also strikes me that Mr. Hanrahan's and the policemen's orgies of prejudicial pre-trial publicity (even including a televised re-enactment), which the grand jury rightly termed "improper," "grossly inaccurate" and "grossly distorted," would have supported indictments under the Act had Hanrahan gone forward with the prosecution of the surviving Panthers ... At the very least, however, the fact remains that the calculated release of false and prejudicial information by Hanrahan is a primary reason that his resignation should be demanded and speedily obtained.

The evidence also supports - I think strongly supports - perjury indictments against a number of the special police who testified before the federal grand jury. Although forewarned of the evidence already in the grand jury's possession, some of the police witnesses nonetheless gave testimony that was wholly inconsistent with the physical evidence. Despite what it called an "irreconcilable disparity," the grand jury developed what it considered a "plausible explanation" for these officers' patently false testimony that they had been met by a fusillade of gunfire from the Panthers. The grand jury suggests "... that

discuss the relevant federal law although there is a promise on page 3 to do so. This is important because the public is likely to misunderstand the question the grand jury was answering when they failed to return indictments. There are important legal differences between the scope of the federal civil rights act (the only act relevant for this grand jury) and state laws. The federal laws speak in terms of "willful" violations of rights; in these circumstances, the obvious example of a willful violation would be a deliberate killing by the policemen, and the grand jury may be telling us no more than that they had insufficient evidence for the charge that Hampton or Clark was murdered. State



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Jon R. Waltz

in the darkness and excitement they [the police] mistakenly attributed to the occupants the fire of other officers." This guesswork on the grand jury's part is consistent with the ineptitude with which the Hanrahan raid was carried off. The difficulties are two-fold: first, it is not a grand jury's function to concoct and then accept questionable defenses and, second, the policemen themselves categorically rejected the grand jury's suggestion. One is left with the inescapable feeling that, whether or not a Chicago jury would convict, perjury was committed by members of the Cook County State's Attorney's police ...

Every day grand juries hand up indictments based on less convincing evidence than is reflected in this report. Of course, this grand jury may have been motivated by its belief that no Chicago jury will convict a policeman, however manifest may be his guilt. The grand jury may have concluded that many Chicagoans, apparently akin with some law enforcement agents, think that the informed execution of "bad men" is justifiable.

It is unimpressive to suggest, as did the federal grand jury, that "... it is impossible to determine if there is probable cause to believe an individual's civil rights have been violated without the testimony and cooperation of that person." The ultimate deprivation of civil rights is a lynching. In any effective lynching the victim dies and cannot testify before a grand jury that his civil rights have, indeed, been abridged. Through the years a number of grand juries have found it possible to surmount the victim's involuntary silence.

laws might well encompass reckless behavior on the part of the police that would fall short of willfulness (manslaughter is an example).

In a report as elaborate as this one, it is surprising that the grand jury did not discuss the legal formula under which they were assessing the facts. I suspect the authors of the report were perfectly willing to have the public be misled, to believe that the grand jury had found insufficient evidence of any police misconduct.

Third, from almost any point of view the heart of the report is the 22 page section (pp. 170-192) in which the testimony of the police themselves before the grand jury is reported. This is the police version under

the police crime lab had mistakenly identified the two shells as having come from a shotgun *allegedly* (remember, no fingerprints!) wielded by Brenda Harris. Motherway added that on April 28, Hanrahan received information from the federal grand jury that showed — based on FBI ballistics — that the shells actually came from the shotgun of officer John Ciszewski, one of the raiders. When confronted with the error, the state had no choice but to drop charges, said Motherway.

### Exhausting Inquiry?

The opening statement of the report's conclusion reads, "This grand jury has sincerely endeavored to exhaust every reasonable means of inquiry to ascertain the facts of this case." Maybe the 23 jurors who labored for four months believe this, but it's inconceivable how anybody else could.

Four policemen testified they saw Brenda Harris fire at them as they entered the front door of the apartment. Since it is now clear she never fired at all, how reliable are their accounts?

Perhaps the grand jury did not push such questions, because any reasonable answers would suggest purposeful lying, or even a conspiracy to commit perjury — and not merely "bungling".

The report touches only superficially on the planning of the raid and even here fails to ask probing questions. No questions are recorded concerning the informant who supplied the state's attorney's police with the tip about illegal guns. Why should the grand jury take the policemen's word that there was an informant, in the light of the contradictions (or lies) in other police statements? Law enforcement officials have, after all, been known to falsely claim that informants gave them tips to cover illegal searches and seizures.

The report criticizes the raiders for not carrying tear gas, but never tells why they didn't.

The report never asks why officer Joseph Gorman brought along a Thompson submachine gun and why such a weapon was necessary, though Groth testified "he had never been on a prior raid where such a weapon was carried."

Why couldn't the raid have been set for 8 p.m. when police were informed (correctly) that no Panthers were in the apartment, instead of 4:40 a.m.? "There was ... discussion that the 8:00 p.m. suggestion could be a trap," says the report. Who offered this suggestion and why? The report does not say.

The major point is that the full range of the police ineptitude and cover-up is accepted by the grand jury as simply poor police practice. The jurors never entertain any other theories of how or why the raid occurred as it did, and this is a chief weakness of their report.

Could the cops have broken into the apartment with the intent of either

murdering Fred Hampton or all the occupants? The facts developed by the grand jury and the FBI could just as easily support this conclusion as any other. Could there have been another reason why tear gas was not taken besides Groth's lame excuse that none was available? After all, if the intent is to kill or terrify you don't need tear gas. The pre-dawn hour for the raid makes sense only if one assumes it was people and not weapons the raiders were looking for. (The excuse about minimizing possible "neighborhood resistance" is preposterous considering there have been at least a half dozen raids on the Panther headquarters a few blocks away from the apartment and *never* has there been any "neighborhood resistance".)

Were the failures of the IID, the coroner and crime lab just an accident, or were they premeditated, on the assumption nobody would ask serious, probing questions about police work in a case involving Panthers? There was ample precedent for such an assumption. On at least two of the raids on Panther headquarters, there were gaping inconsistencies in the police and

FBI accounts, but nobody — least of all the media and organized bar — asked for an explanation.

Nathan Lewin, a former Justice Department official, writing in the *New Republic*, asks, "Is it conceivable that a shooting spree of the kind shown by this investigation ... was anything other than an 'unreasonable' search? Even assuming that Mark Clark had initially fired a rifle shot as the police sought entry, what possible reason could there have been to shoot the other occupants, none of whom — according to the physical proof — used a weapon?"

One of the strongest indictments of the grand jury and the report came from Thomas N. Todd, a black former assistant U.S. attorney under Tom Foran, now with the Center for Urban Affairs at Northwestern University.

"There are two kinds of whitewash," says Todd. "The stupid kind, which is what the IID was guilty of, and the intentional kind — the kind the federal grand jury was guilty of."

FRANCIS WARD

## Highlights of the grand jury

(Harvey Johnson, operating director of the Chicago Crime Commission, had said that evidence of bird shot pellets in the apartment proved that non-police weapons were used. "Any policeman who used birdshot would be laughed out of the station" Johnson told a reporter.)

The report states:

"Sgt. Delaney also issued (the raiding party members) 25 rounds of Number 8 birdshot and 15 rounds of double-ought buck shot."

Could it be that Harvey Johnson has been "laughed out of the station?"

The sergeant in charge agreed that the crime scene investigation was conducted, not to obtain all the available evidence, but, to try to establish the authenticity of the account given by the raiding officers.

"The press had indicated, incorrectly, that the coroner had recovered no bullets."

This is a nice way to say that Coroner Andrew Toman lied to the press, repeatedly, about whether bullets had been recovered from Hampton's body. He continually denied that a slug had been recovered. Of course, this could just be evidence of "bungling" or whatever euphemism gives our elected coroner the benefit of the most doubt.

Later, the report blames "confusion over the recovery of a bullet by the coroner" as one of "the errors in the second autopsy" — the one conducted by the Panthers' team of experts.

Capt. Harry Ervanian, director of IID,

testified "that the circumstances of the incident had not been developed 'with any degree of accuracy' and that he had not carried out his duty as Director of IID."

Q. (by juror) Again, Captain, do you think it would be unfair or unreasonable for a person to come to the conclusion even adding the facts of the crime lab report, that this was a whitewash?

A. (by Ervanian) I would agree, sir, that this was a very bad investigation, yes, sir.

Q. Well, it was extremely bad, wasn't it?

A. Yes, sir.

But where are the clincher questions, or the conclusions from the Grand Jury that common sense dictates?

Are we to assume that it was mere coincidence that IID "bungled" the most important investigation to come its way in years? Are we to assume that Ervanian was not aware of the extraordinary controversy that had exploded over the raid and the inconsistencies in the raiders' stories?

"This officer (Daniel Groth) testified most emphatically (at the coroner's inquest) that he had examined the panel in the living room door ... and observed only one hole in the panel (the hole caused by the shotgun blast from within the apartment). He stated he looked for other holes in the door but could not find them, and if he did see them he would have recalled them.

"Before this Grand Jury, the Sergeant acknowledged that ... more than one (shot) had gone through it."

It can be assumed that this lapse of memory on Groth's part is more evidence of "bungling." Any other conclusion, of

# talk:

At an April CJR Convention on broadcasting, FCC Commissioner Nicholas Johnson addressed some personal comments to representatives from the various media:

"I say with great power goes great responsibility. And when you are controlling the single most important means of information, when you are setting the national priorities . . . It's no accident that we've stopped worrying now about poverty and started worrying about pollution. Every January, we pick up a new topic, you know? This year it's environment. Well, where did that come from, man? That wasn't a handbill that appeared on my door that told me that. See? So you set the national agenda. You give people their opinion. You set the life style."

Bob Wildau, until May, a *Time* correspondent in the magazine's Chicago bureau, quit his job and joined a commune in Taos, New Mexico. He discusses his

reasons for leaving:

"I'm leaving straight reporting for a while — not as a media dropout — but to do some exploring. I tried very hard to slough off my self-identification as a reporter, not because I haven't enjoyed tremendously a lot of things I've done — but it just came down to a point where I found out there was so much more going on. There was no way of jamming it into my files, much less getting it into the magazine.

"I want to see what is *really* being done, in a way you can't see it as a reporter — especially as a reporter for *Time* — if your editors are going to insist on your making a judgment as to the economic and social viability of something that's experimental — where the whole idea is to try to make the future come true in the present. I don't feel that I can put *Time*'s strictures on the revolution. One thing about mainstream journalism is that we're so often asked to judge what is *coming* by the standards of what *is*."

Frank Gerace is past president of Bolivian Radio Schools and, until recently, producer of *Oiga Amigo* for WLS. He has left the US to do free-lance correspondence and film work in Latin America:

"As I leave Chicago for personal and professional reasons, I think of several projects and dreams that still must be brought to reality.

"Minority participation in the media must be strengthened on all fronts. I'm not talking about jobs. This must come and will come by other strategy. I mean participation in determining the content and the slant of the message, the production and the delivery.

"Someone (CJR?) has to provide workshops on the nature, weaknesses and utilization of the media to authentic community leaders. Perhaps the urgency is greater for our Latin leaders, since the blacks have already gained a certain sophistication in this field."

Nicholas Johnson:

"Gradually, here and there, you're finding more and more men who are willing to stand up and say, 'What we've been doing is wrong and I'm gonna stop it, and I'm gonna urge my colleagues to stop it, because it's wrong.' . . . There are more and more in this country; and they're an increasingly powerful band and they're increasingly embarrassing to their colleagues, who realize how weak they are."

Frank Gerace:

"Community television franchises. It is possible to dream of minority control of a CATV franchise. Why not work towards it? This is a long term, day to day, revolutionary activity — with all the red tape and chicken shit of working in the system. But the result, if achieved — a people's TV source — is worth all of it.

And dig, nothing but nothing will be done by the people if we don't turn them on, advise and backstop with our expertise, knowledge and contacts.

Bob Wildau:

"I covered the Conspiracy Trial. For me, it was a radicalizing process. I really feel that in my reporting, I went about as far as I could in trying to explain why this awful spectacle was taking place, awful from the point of view of someone who hates to see the fabric of society being torn and trying to explain this through a medium that felt duty-bound to parcel blame out to both sides in the trial — the prosecution and the judge, and the defendants — but the over-all tone was clearly that of outrageous provocations against the legal system, and so forth. I just felt at that point, there was no reconciling the two in print. I felt I was limited in what I could write by the credence of my editors — their political inflexibility.

"All the way through the trial, I had the feeling that I should have been on the other side — at the defense table. I really did want to be part of the movement for change in this country."

A spring CJR radio show — a conversation between Ken Pierce and Chicago *Seed* editor Marshall Rosenthal:

Pierce: Most young journalists are not conservatives. Is it that people who become journalist are naturally activists, or are they ordinary guys who become liberals or radicals because of what they see?

Rosenthal: To answer that, I'll use something Jack Kerouac said, "Everybody knows everything." We're all aware of the insanity around us and within us. I don't think it's that reporters have feelings more than other people. Maybe it's because reporters are living closer to the edge, the rawness of life.

Bob Wildau:

"By joining the commune, I really think my journalist's instincts will resurface. I want to see the world in a broader perspective than my reporter's role will allow.

"My theory about why reporters become so liberal is that news by its very nature is change. They see so much that ought to be changed, but isn't, so it's not news, but it's wrong. Either you have to turn off your sensibilities, or you have to do something about it."

Nicholas Johnson:

"You've got the power in this society; you've got the power to build this country or to tear it down; you've got the power to tell us we ought to build our cities or we ought to burn them, that we ought to go to Mars or we ought to feed the hungry here on earth."

HARRIET HEYMAN

## Jury report

course, would suggest that Groth lied before the Coroner's jury, and that does not fit well with the theory that the "system" of justice does work.

"Of primary significance are . . . findings and testimony identifying three shotgun shells as having been fired from weapons seized by the police from the premises. (Crime lab) findings were later proved to be in error as to two of the shells by the FBI ballistic examination. (A crime lab officer thereafter admitted his error to the Grand Jury."

His error? C'mon, fellas.

"The guns of police officers were not turned into the Chicago Police Department Crime Lab for examination, although to do so is standard practice."

"The firearms examiner testified before this Grand Jury that due to daily pressure from the State's Attorney's office he was required to report his findings before he had examined all of the State's Attorney's Police weapons. The examiner said that he could not refuse to sign a report without being fired from his job. He told this Grand Jury that the physical evidence was turned over to him by the State's Attorney's police in such a condition as to make his work extraordinarily difficult, and that he could not complain because it was the State's Attorney's Office which had turned the materials in to him."

"The great variance between the physical evidence and the testimony of the officers raises the question as to whether the officers are falsifying their accounts."

No shit.